

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
FTX Trading Ltd., et al.,) Case No. 22-11068 (JTD)
Debtors.) (Jointly Administered)

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CLERK
U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

OBJECTION TO MOTION OF DEBTORS FOR ENTRY OF AN ORDER

I, John Mallon (the “**Objector**”), a customer and creditor of the Debtors, hereby respond and object (the “**Objection**”) to the Debtors’ Motion For Entry Of An Order Authorizing And Approving (I) Procedures For The Sale Or Transfer Of The Trust Assets And (II) The Sale Or Transfer Of Such Trust Assets In Accordance With Such Procedures Free And Clear Of Any Liens, Claims, Interests And Encumbrances, filed November 3, 2023¹ (the “**Motion**”).

1. Factual background

Objector was a customer of the Debtors prior to their filing for Chapter 11 reorganisation protection (the “**Proceedings**”) in this court on November 11, 2022 (the “**Petition Date**”). For most of Objector’s time as a customer of the Debtors, their liability to Objector was in the form of a USD cash balance held on FTX Trading’s “.com” international trading platform (the “**Platform**”). Prior to the Proceedings, Objector used their entire cash balance to buy a product known as tokenised stocks (“**Tokens**”) on the Platform (the “**Transactions**”). Almost all of Objector’s holdings on the Platform were shares of the Grayscale Bitcoin Trust (“**GBTC**”) held in their tokenised form (“**GBTCUSD**”).

The Debtor entities’ documentation for Tokens (the “**Documentation**”)², at Appendix 2, provided, *inter alia*, that Tokens are backed by the underlying shares upon which the Token is based (“**Underlying Shares**”)³, brokered by a subsidiary and custodied with a third party who was undisclosed at the time⁴. Crucially, in order to be eligible to purchase Tokens, customers on the Platform were required to complete an additional know-your-customer (“**KYC**”) application and compliance checks⁵ to become a customer of the broker of the

¹ Docket number 3660.

² The Documentation is incorporated into this Objection.

³ This means, for example, that GBTCUSD Tokens offered on the Platform were backed and could be redeemed for shares of GBTC as traded on the over-the-counter (“**OTC**”) market. The Documentation provides that Tokens “can be redeemed... for the underlying shares if desired”.

⁴ As this objection will highlight, by attempting to sell its GBTC shares, the Debtors concede that these shares were within the estate generally, and that they are the “custodian” of the GBTC shares which are owing to Token holders.

⁵ Users of the Platform (even having completed full KYC for the Platform) **could not** trade in Tokens without completing **additional** KYC.

Tokens and the Underlying Shares: FTX Switzerland GmbH⁶ (“**FTX Switzerland**”), which is a 100%-owned subsidiary of FTX Europe AG⁷ (“**FTX Europe**”).

Objector referred to this in a previous objection⁸, and a copy of this Previous Objection⁹ is at Appendix 1 which describes that holders of Tokens on the Platform own and are owed the Underlying Shares that Debtor entities (through the Platform) held out as backing the Tokens in order to solicit customers to use their money to purchase the Tokens. The breakdown of how this occurred is set out in full in the Previous Objection at Appendix 1, which is supported by the Documentation, at Appendix 2, provided by Debtor entities at the time of the KYC process and valid as of the Transactions.

To summarise the Previous Objection:

- FTX held themselves out as offering a service by which Tokens (held on FTX) could be redeemed for the Underlying Shares;
- Additional KYC procedures were required to trade in Tokens, specifically in order to become a customer of the broker of the Underlying Shares;
- Money was solicited into these Tokens on the basis that the underlying asset, i.e. the Underlying Shares, could be redeemed;
- Therefore, holders of Tokens have an interest in the actual Underlying Shares.

In the hearing on the Previous Motion, on January 11, 2023, counsel for the Debtors, Andrew Dietderich, referring to the Previous Objection, said the following (upon which was secured the court’s agreement that the Previous Objection should be overruled):

“Mr Mallon’s objection alleges a security interest arising as best I can understand it under Swiss law. That objection obviously could be resolved by... a sale objection¹⁰, but in addition, we are able to attach a lien, to the extent he had security for some of the proceeds of the sale.”

⁶ Also a debtor in the Proceedings and ultimately owned by FTX Trading.

⁷ Also a debtor in the Proceedings and ultimately owned by FTX Trading.

⁸ Docket number 358 (the “**Previous Objection**”), objecting to the motion in docket number 233 (Debtor motion for the entry of orders, among other things, approving the sale free and clear of liens, claims, interests and encumbrances of, among other Debtor assets, FTX Europe AG (the “**Previous Motion**”).

⁹ The Previous Objection is incorporated into this Objection.

¹⁰ To pre-empt the same response, Objector understands from the Motion that the Debtors do not at this time have a specific proposed sale or buyer for the GBTC shares, but are merely proposing sale procedures as defined therein. However, as these procedures include steps such as marketing the assets for sale (assets which belong to holders of Tokens), it is submitted the claims made in this Objection are timely and relevant.

2. The Motion

Whilst the Motion deals with shares of multiple Grayscale trusts, this Objection is only concerned with GBTC.

In the Motion, the Debtors provide that they hold various shares in the Grayscale investment products, in brokerage accounts at ED&F Man Capital Markets, Inc and Deltec Bank and Trust Limited. Among these assets are 22,280,720 shares of GBTC. The closing price of GBTC yesterday, November 16, 2023, was \$28.99 (the “**Current Price**”)¹¹, therefore as of pre-market on the date of this Objection the total value of these holdings is \$645,918,072.80.

In the Motion, the Debtors provide that they “do not believe there are any valid [l]iens on the [shares of GBTC] but any valid [l]iens will attach to the proceeds of sales or transfers of any pledged [shares of GBTC] and be paid from such proceeds.”

As outlined in the Previous Objection, the Objector disputes that there are no liens on the shares of GBTC. It is submitted that part or all of the GBTC shares proposed to be sold, are the Underlying Shares described in this Objection.

3. The Objection

In support of the Motion, the Debtors provide that the sale of GBTC shares is “necessary to maximize and preserve the value of the estate for the benefit of creditors and interest holders”, and cite the fiduciary duty of the debtor to protect and maximise the value of the estate's assets.

The closing price of GBTC on the Petition Date was \$8.87. However, the range created in the GBTCUSD Token in the days surrounding the Proceedings was \$2.80 - \$31.83 (the “**Token Range**”), oscillating around the GBTC price traded on the OTC market. As mentioned above, the Current Price of GBTC is \$28.99, which coincides with the upper band of the Token Range. The Debtors’ plans to dollarize claim values at the Petition Date, whilst liquidating certain shares backing the Tokens at prices which are over 200% higher than the Petition Date creates a situation where the estate is gaining on a dollarized basis from those with an interest in the underlying asset (i.e. Token holders). In the Motion, Debtors provide the sales “will benefit creditors” and are in the “best interests of... all creditors”. Whilst Objector fully supports all reasonable trading activity that would maximise financial recovery for all customers, it would be inequitable for this to occur at the expense

¹¹ <https://www.grayscale.com/crypto-products/grayscale-bitcoin-trust>, last accessed pre-market on November 17, 2023.

of a subset of those customers (i.e. Token holders who are owed the Underlying Shares). This is what will occur if GBTC holdings are permitted to be sold for the benefit of the general estate.

Concerning the pledge by the Debtors to deal with any claims over the GBTC shares by attaching any interest in the shares to the proceeds, it is important to determine when these interests are valued for the purposes of the proceeds attached. Using the price data provided above, there is an almost \$450 million difference between the values of the over 22 million GBTC shares on the Petition Date and at the Current Price. It would be inequitable for this to flow into the general estate, when there are genuine claims on the actual underlying assets being sold, i.e. claims by Token holders.

4. Outcome Sought

Objector argues that in order to satisfy the interests of holders of GBTC Tokens, which as provided above and in the Previous Objection are backed by actual shares of GBTC which are proposed to be sold, one of the following outcomes must be achieved:

1. The GBTC shares owed to Token holders should be carved out from the assets to be sold and made available to Token holders, outside of the Proceedings; *or*
2. The proceeds to which the interests of affected Token holders attach should be the prices that the shares are actually sold for, *and* these proceeds should be made available to affected Token holders timely after the sale, outside of the Proceedings.

Notwithstanding this Objection, until a resolution is reached, Objector reserves the right to redeem the Underlying Shares from any Debtor entity.

As well as the court's consideration of this Objection, Objector also welcomes the Debtors to engage in a meaningful discussion to resolve this reasonable Objection.

Respectfully submitted
11/17/2023,

/s/ John Mallon
Belfast,
United Kingdom
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Pro se creditor

APPENDIX 1

The Previous Objection

Filed as docket number 358, original filed at court on December 29, 2022.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
FTX Trading Ltd., et al.,)	Case No. 22-11068 (JTD)
)	
Debtors.)	(Jointly Administered)

OBJECTION TO MOTION OF DEBTORS FOR ENTRY OF CERTAIN ORDERS

I, John Mallon (the “**Objector**”), a customer and creditor of the Debtors, hereby respond and object to the *Motion of Debtors for entry of orders (i)(a) Approving bid procedures, stalking horse protections and the form and manner of notices for the sale of certain businesses, (b) Approving assumption and assignment procedures and (c) Scheduling auction(s) and sale hearing(s) and (ii)(a) Approving the sale(s) free and clear of liens, claims, interests and encumbrances and (b) Authorizing assumption and assignment of executory contracts and unexpired leases*, filed on December 15, 2022 (the “**Motion**”)¹².

1. Factual background

Objector was a customer of the Debtors prior to their filing for Chapter 11 reorganisation protection in this court on November 11, 2022 (the “**Proceedings**”). For most of Objector’s time as a customer of the Debtors, their liability to Objector was in the form of a cash balance held on the FTX.com international trading platform (the “**Platform**”). Prior to the Proceedings, Objector used their entire cash balance to buy a product known as tokenised stocks (“**Tokens**”) on the Platform. The Debtors’ documentation for Tokens provided, *inter alia*, that Tokens are backed by the underlying shares upon which the Token is based (“**Shares**”), brokered by Canco GmbH (based in Switzerland, and now known as FTX Switzerland GmbH) and custodied with an undisclosed third party. In order to be eligible to purchase Tokens, customers on the Platform were required to complete an additional know-your-customer (“**KYC**”) application to become a customer of the broker of the Tokens and the Shares: FTX Switzerland GmbH (debtor #53 in the Proceedings, “**FTX Switzerland**”), which is a 100%-owned subsidiary of FTX Europe AG (debtor #41 in the Proceedings, “**FTX**

¹² Document 233 in these bankruptcy proceedings.

Europe”), formerly known as Digital Assets DA AG. It is FTX Europe, among other debtor entities which are proposed to be sold in the Motion. This objection concerns only the proposed sale of FTX Europe, including its assets, and its subsidiaries and their assets (the “**FTX Europe Business**”).

2. The Objection

This objection concerns the Debtors’ attempt in the Motion to seek approval of the sale of the FTX Europe Business, free and clear of liens, claims, interests, and encumbrances, “which may involve a sale of 100% of the interests in FTX Europe held by FTX Trading or sales of stock and/or assets of FTX and/or *its subsidiaries*”¹³ (the “**Sale**”).

Objector submits that there may exist a customer and debtor/creditor relationship between FTX Switzerland and customers of the Platform who submitted the enhanced KYC application to become customers of FTX Switzerland, whose applications were approved by the Debtors, and who then went on to purchase Tokens (“**Token Customers**”). Objector is part of an informal group of Token Customers and submits there are many others in a similar position.

Confirmation on the Identity Verification/KYC section of Objector’s account on the Platform:

Tokenized Stock KYC

Brokerage services with respect to any tokenized stock on ftx.com are provided by FTX Switzerland (Canco GmbH). TOKENIZED STOCKS ARE NOT OFFERED WITHIN THE UNITED STATES OR PROHIBITED JURISDICTIONS.

Status: Ready to trade

Objector further submits that due to the representations made to customers by Debtors regarding Tokens *infra*, Token Customers may have a secured claim over the Shares held by FTX Europe or FTX Switzerland.

Therefore, Objector respectfully requests that the proposed sale of the FTX Europe Business be paused pending a review of the FTX Europe affairs and their assets, as well as the potential customer relationships/creditor claims, in order to avoid the rights of customers/creditors being sold off.

3. The Documentation

The Debtors maintained documentation covering Tokens (“**Documentation**”)¹⁴, as part of its helpdesk policies. A copy of the version which was current at the time the Proceedings were filed is attached to this

¹³ Page 6 of the Motion.

¹⁴ <https://web.archive.org/web/20221027042145/https://help.ftx.com/hc/en-us/articles/360051229472-Tokenized-Stocks>.

filing. It is submitted that in the Documentation, the Debtors made certain representations which are relevant to the objection.

1. Outlining breakdown of customer relationship, and that the brokerage is provided by FTX

Switzerland, not FTX Trading Ltd:

How is this trading regulated?

Canco GmbH (FTX Switzerland) is an authorized financial intermediary permitted to offer these products. All FTX users who trade tokenized stocks may also become customers of FTX Switzerland, and pass through its KYC and compliance. Furthermore, all trading activity may be monitored for compliance by FTX Switzerland. FTX Switzerland custodies the equities at a third party brokerage firm. Canco GmbH (FTX Switzerland), instead of FTX Trading Ltd, FTX Digital Markets Ltd or other affiliates, provides the brokerage services. 2.

Outlining that applicants for this service become customers of FTX Switzerland:

How do you trade tokenized stocks on FTX?

Mechanically, you trade tokenized stocks the same way you trade other spot markets. Fees, API calls, and GUI instructions are all the same.

In order to register for tokenized stocks trading on FTX, go to <https://ftx.com/tokenized-equities-kyc> to submit your KYC information to and become a customer of Canco GmbH (FTX Switzerland).

Following that, you may be asked to answer some information on your trading experience.

3. Outlining that the tokens are backed by shares and custodied by FTX Switzerland, and that tokens can be redeemed for the underlying shares:

What exactly is traded on FTX?

FTX itself lists tokens on the equities. For instance, ftx.com/trade/TSLA/USD is a market to trade tokens on Tesla stock.

These spot tokens are backed by shares of Tesla stock custodied by FTX Switzerland. They can be redeemed with FTX Switzerland for the underlying shares if desired. In the future, there may be other ways to withdraw the tokens from FTX. If you are interested in getting set up to redeem the stocks, please email support.

4. Describing situations based on the rights (e.g. right to receive dividend, and right to vote) which would suggest ownership of underlying shares by FTX Switzerland:

How are corporate actions handled?

Holding tokenized stocks on FTX entitles users to dividends, etc. of the underlying stock. FTX will pursue all reasonable actions to have the tokens on FTX reflect the corporate actions of the underlying equities, including through dividends and stock splits. It is not anticipated that the shares will exercise their voting rights but FTX Switzerland may do so in its discretion.

For US listed products, the dividends on FTX will be paid out at 2pm HKT on ex-date. At this time US equities are closed, and it's between after-hours and pre-open trading.

We will continue to investigate but for now dividends will be paid out *gross* of tax, and it will be up to each user to understand the tax consequences of any dividends they receive.

Dividends will generally be credited to your account around 2pm HKT.

In the event of an unusual circumstance we will endeavor to have a fair and reasonable resolution.

Objector submits that due to the way in which the legal relationship between Token Customers and FTX Switzerland was established and due to the representations made in the Documentation and highlighted above, there may be “liens, claims, interests and encumbrances” on the FTX Europe Business.

Objector submits that Token Customers may be secured creditors of FTX Switzerland and/or FTX Europe, because a transfer of money was made to the Debtors based on a representation by the Debtors that there was an underlying security backing the Token for which the money was transferred.

4. Outcome Sought

Objector submits that any Shares held by FTX Switzerland or FTX Europe should be made available to settle Token Customers' claims prior to the Sale. If the Shares are with a third-party custodian per the Documentation, these Shares should be redeemed by FTX Switzerland or FTX Europe to be made available to settle Token Customers' claims prior to the Sale, or arrangements should be made with Token Customers so that the proceeds of the liability owed to FTX Switzerland or FTX Europe by this custodian should be made available to settle Token Customers' claims.

APPENDIX 2

Debtor entities' Documentation concerning Tokens¹⁵

Tokenized Stocks – FTX Exchange



web.archive.org/web/20221027042145/https://help.ftx.com/hc/en-us/articles/360051229472-Tokenized-Stocks

Tokenized Stocks

FTX Crypto Derivatives Exchange

Updated June 14, 2022 16:51

Disclaimers

1. *None of this is investment advice.*
2. *Much of the below analysis ignores any difference between equity prices on different venues, and ignores the effects of fees. It also ignores slippage, and generally assumes that all transactions happened at theoretical prices instead.*
3. *While this does generally describe how tokenized stock trading on FTX works, it contains approximations and should not be taken as precise.*
4. *In general, FTX reserves the final right to interpretation of all actions on its platform.*
5. *This document may become out of date at some point and fail to reflect updated policies.*
6. *FTX reserves the right to restrict usage of its tokenized stock trading as it sees fit.*
7. *Users should trade tokenized stocks at their own risk.*
8. *Brokerage services with respect to tokenized stocks on FTX are provided by Canco GmbH (FTX Switzerland).*
9. *Tokenized Stocks, like the rest of FTX, are not being offered to US users or other prohibited jurisdictions, potentially including Iran, Afghanistan, North Korea, Hong Kong, Singapore, Australia and/or other jurisdictions. Users must pass sufficient KYC checks in order to trade tokenized stocks on FTX. For more information, see [here](#).*

FTX Switzerland (Canco GmbH) is authorized to provide brokerage services for tokenized stock trading.

What are tokenized stocks?

Equities are stocks that trade on traditional regulated exchanges. In addition to tokenized stocks, FTX may be offering tokens on ETFs, futures, currencies, or other similar products.

¹⁵ <https://web.archive.org/web/20221027042145/https://help.ftx.com/hc/en-us/articles/360051229472-Tokenized-Stocks>.

How is this trading regulated?

Canco GmbH (FTX Switzerland) is an authorized financial intermediary permitted to offer these products. All FTX users who trade tokenized stocks may also become customers of FTX Switzerland, and pass through its KYC and compliance. Furthermore, all trading activity may be monitored for compliance by FTX Switzerland. FTX Switzerland custodies the equities at a third party brokerage firm. Canco GmbH (FTX Switzerland), instead of FTX Trading Ltd, FTX Digital Markets Ltd or other affiliates, provides the brokerage services.

In order to trade tokenized stocks on FTX, you must be at least KYC level 2. Once you are, you can go to your tokenized stocks KYC page to submit your information to FTX Switzerland. You must also not be a member of one of FTX's restricted jurisdictions, including the United States; FTX collects KYC documents and IP addresses from its users. FTX does not operate in its restricted jurisdictions.

FTX and FTX Switzerland may also collect further information from prospective users, and may require passing a test in order to trade. Further compliance measures may be used as appropriate.

Users are also encouraged to consult their personal and local situation in order to determine whether trading tokenized stocks on FTX is right for them.

What exactly is traded on FTX?

FTX itself lists tokens on the equities. For instance, ftx.com/trade/TSLA/USD is a market to trade tokens on Tesla stock.

These spot tokens are backed by shares of Tesla stock custodied by FTX Switzerland. They can be redeemed with FTX Switzerland for the underlying shares if desired. In the future, there may be other ways to withdraw the tokens from FTX. If you are interested in getting set up to redeem the stocks, please email [support](#).

Who can trade tokenized stocks on FTX?

In order to trade tokenized stocks on FTX, you must be at least KYC level 2.

All FTX users who trade tokenized stocks must also pass through Canco GmbH's (FTX Switzerland's) KYC and compliance. Once you are KYC 2, you can go to your [settings page](#) to submit your information to FTX Switzerland.

You cannot trade tokenized stocks on FTX from any of the banned jurisdictions, including the United States. Note that the set of allowed jurisdictions is subject to change.

How do you trade tokenized stocks on FTX?

Mechanically, you trade tokenized stocks the same way you trade other spot markets. Fees, API calls, and GUI instructions are all the same.

In order to register for tokenized stocks trading on FTX, go to <https://ftx.com/tokenized-equities-kyc> to submit your KYC information to and become a customer of Canco GmbH (FTX Switzerland).

Following that, you may be asked to answer some information on your trading experience.

How long does KYC take?

First, you must be KYC 2 on FTX. That can take up to a day.

Then, you submit your KYC information to FTX Switzerland. That could be quite fast, but generally takes a couple business days. The process takes substantially longer if you submit incomplete or unclear KYC information.

Note that if you have an institutional account on FTX, KYC with FTX Switzerland will likely take at least a day or two. Individual accounts are often faster.

How are corporate actions handled?

Holding tokenized stocks on FTX entitles users to dividends, etc. of the underlying stock. FTX will pursue all reasonable actions to have the tokens on FTX reflect the corporate actions of the underlying equities, including through dividends and stock splits. It is not anticipated that the shares will exercise their voting rights but FTX Switzerland may do so in its discretion.

For US listed products, the dividends on FTX will be paid out at 2pm HKT on ex-date. At this time US equities are closed, and it's between after-hours and pre-open trading.

We will continue to investigate but for now dividends will be paid out *gross* of tax, and it will be up to each user to understand the tax consequences of any dividends they receive.

Dividends will generally be credited to your account around 2pm HKT.

In the event of an unusual circumstance we will endeavor to have a fair and reasonable resolution.

What hours to tokenized stocks trade on FTX?

24/7! Note, however, that the the liquidity of the underlying assets may vary over the course of the day and week, and that might end up reflected in the liquidity of FTX's markets.

How do tokenized stocks interact with balances on FTX?

Tokenized stocks are spot tokens, like BTC/ETH/FTT/etc. They can also be used as collateral for futures trading on FTX, with a collateral weight of 0.85 (total) and 0.80 (initial).

How do futures on tokenized stocks work?

FTX also lists futures on tokenized stocks, including tokenized futures.

Tokenized stock futures will track FTX spot markets as their index. They will work the same as futures on other FTX products, with the following conditions:

- 1) In the case of an ordinary dividend, the futures will *not* have any adjustments
- 2) In the case of many other corporate actions, including stock splits, significant spinoffs, etc., futures *will* adjust, either by changing denominators or by turning into a future on the whole basket in the case of spinoffs.
- 3) FTX reserves the final right to determination.
- 4) Futures expire to their index (generally the FTX spot markets) over the relevant TWAP period.

Trading futures on tokenized stocks on FTX requires the same KYC procedure as trading tokenized stocks themselves.

Note that stocks can be highly volatile and illiquid, especially when their primary listing exchange is closed. Please exercise your judgement and caution when trading futures on tokenized stocks. Any risk that you take in your trades is your responsibility to manage. You might be liquidated if futures prices change.